

Message Text

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17

ACTION EA-14

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TO SECSTATE WASHDC 2220

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C O N F I D E N T I A L TOKYO 7040

E.O. 11652 GDS

TAGS: ENRG, JA

SUBJ: OIL FIRMS INDICTED ON PRICE FIXING CHARGES

SUMMARY: TOKYO HIGH PROSECUTOR'S OFFICE ANNOUNCED MAY 27 THAT IT HAD ACCEPTED RECOMMENDATION OF JAPANESE FAIR TRADE COMMISSION (FTC) AND WOULD INDICT TWELVE OIL FIRMS OPERATING IN JAPAN ON CHARGES OF ORGANIZING PRODUCTION CONTROL AND PRICE FIXING CARTELS. SHELL WAS ONLY NON-JAPANESE FIRM INDICTED: NO AMERICAN FIRMS ARE INVOLVED. INDICTMENT LIKELY TO MAKE IT MORE DIFFICULT FOR MITI TO EXERCISE ITS TRADITION EFFICIENT CONTROL OVER DOMESTIC JAPANESE OIL INDUSTRY. END SUMMARY.

1. BEGIN UNCLASSIFIED: ON MAY 27 THE TOKYO HIGH PUBLIC PROSECUTOR'S OFFICE INDICTED TWELVE OIL FIRMS ON CHARGES OF ORGANIZING CARTELS IN VIOLATION OF ANTI-MONOPOLY LAW. THE PETROLEUM ASSOCIATION OF JAPAN (PAJ), THE ASSOCIATION OF REFINERS, WAS ALSO NAMED IN THE INDICTMENT, AS WERE
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SEVENTEEN EXECUTIVES OF OIL FIRMS. WITH THE EXCEPTION

OF SHELL SEKIYU, SHELL OIL'S SUBSIDIARY IN JAPAN, ALL FIRMS ARE JAPANESE INDEPENDENT OIL FIRMS. INDICTMENT WAS THE RESULT OF INVESTIGATION CONDUCTED BY THE FTC OF THE ACTIVITIES OF THE TWELVE FIRMS WHICH TOGETHER HANDLE 85 PERCENT OF THE TOTAL SALES OF PETROLEUM PRODUCTS IN JAPAN.

2. IN INDICTING TWELVE FIRMS, PROSECUTOR'S OFFICE ACCEPTED FTC CHARGES THAT BETWEEN FALL OF 1972 AND AUTUM OF 1974 FIVE AGREEMENTS CONCLUDED AMONG FIRMS WERE PRICE CARTELS AND THAT TWO AGREEMENTS WERE PRODUCTION RESTRICTING CARTELS. CASE REPRESENTS FIRST TIME JAPANESE FTC HAS EVER CHARGED INDUSTRY GROUP VIOLATING PRICE FIXING PROVISIONS OF ANTI-MONOPOLY LAW.

3. ONE OF MOST CONTROVERSIAL ASPECTS OF FTC CHARGES HAD BEEN SUGGESTION THAT MITI HAD BEEN INVOLVED IN DECISIONS TAKEN BY ALLEGED CARTELS. PROSECUTOR'S OFFICE, HOWEVER, FOUND NO EVIDENCE THAT MITI HAD QTE POSITIVELY UNQTE TAKE PART IN CARTELS, THUS FORMALLY CLEARING MITI OF THIS CHARGE. NEVERTHELESS, MITI'S ROLE IN ISSUING ADMINISTRATIVE GUIDANCE AND ITS RELATIONSHIP TO DELIBERATIONS OF CARTEL EXPECTED BY PRESS TO BECOME MAJOR ASPECTS OF CASE. OBVIOUSLY AWARE OF THIS POSSIBILITY, MITI VICE MINISTER YAMASHITA HELD PRESS CONFERENCE MAY 28 TO COMMENT ON INDICTMENT. HE NOTED THAT TOUGH INDICTMENT HAD NO RELATION TO MITI'S ADMINISTRATIVE GUIDANCE PROCEDURE AND THAT MITI BELIEVED IT SHOULD CONSIDER WHETHER IT SHOULD MORE CLEARLY DEFINE LIMITS OF ADMINISTRATIVE GUIDANCE OR WHETHER GUIDANCE IN FUTURE SHOULD BE SHIFTED TO LEGAL CONTROLS. YAMASHITA ALSO SAID HE COULD ESTABLISH THAT MITI NOT GUILTY OF ANY ACTIONS TO RAISE PRICES. ADDED THAT IN TRYING CASE COURT SHOULD CONSIDER QTE EXTENUATING CIRCUMSTANCES UNQTE UNDER WHICH OIL COMPANIES CATED. END CLASSIFIED.

4. BEGIN CONFIDENTIAL. EMBOFFS DISCUSSED CASE WITH PRESIDENT OF MIBIL SEKIYU (RICHARDSON), MOBIL'S SUBSIDIARY IN JAPAN. RICHARDSON STRESSED THAT MOBIL NOT CHARGED IN INDICTMENT BECAUSE IT IN NO WAY INVOLVED CONFIDENTIAL

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IN CARTELS. IN FACT HE SAID, CARTELS WERE AIMED AGAINST MOBIL AND EXXON, THE TWO U.S. MAJORS IN JAPAN WITH RETAIL OUTLETS.

5. RICHARDSON NOTED THAT MITI HAD ALWAYS CLOSELY CONTROLLED BOTH PRICING AND PRODUCTION ACTIVITIES OF OIL FIRMS OPERATING IN JAPAN, AND THIS VERY UNLIKELY TO BE AFFECTED BY CURRENT COURT CASE. HOWEVER, ACCORDING TO

RICHARDSON, REAS EFFECT OF DECISION TO INDICT OIL
FIRMS WILL BE TO DESTROY ESSENTIAL ROLE PLAYED BY
PETROLEUM ASSOCIATION OF JAPAN IN ENERGY POLICY MAKING
PROCESS. SINCE PLANNING ON NATIONAL SCALE IS DIFFICULT,
MITI HAS MADE IT A PRACTICE TO SUBMIT ITS PROPOSED
DECISIONS IN DOMESTIC OIL POLICY AREA TO PAJ FOR REVIEW
BY INDUSTRY PROFESSIONALS PRIOR TO IMPLEMENTATION. OIL
FIRMS, MEETING AS GROUP UNDER AUSPICES OF PAJ, THEN
GAVE ADVICE ON HOW PROPOSALS COULD BE IMPROVED AND
HITCHES ELIMINATED. RICHARDSON CONCLUDED THAT AS RESULT
OF FTC ACTION OIL COMPANIES AS BODY COULD NO
LONGER ADVISE MITI ON ENERGY POLICY. THIS WOULD MEAN
THAT JAPANESE DOMESTIC ENERGY POLICY WOULD BE SUBJECT
TO LOT MORE QTE HICCUPS UNQTE IN FUTURE.
SHOESMITH

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